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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,837	03/10/2004	Roy W. Mattson JR.	RM449g	5676
23996	7590	12/13/2004	EXAMINER	
RICK MARTIN PATENT LAW OFFICES OF RICK MARTIN, PC 416 COFFMAN STREET LONGMONT, CO 80501			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/797,837	MATTSON ET AL.	
	<b>Examiner</b> Tuan N. Nguyen	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 September 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-25 is/are pending in the application.  
4a) Of the above claim(s) 16,17 and 20-25 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-15,18 and 19 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/19/04 & 3/10/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Group I: claims 1-15, 18 and 19 in the reply filed on 9/27/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 16, 17 and 20-25 are withdrawn from further consideration.

***Information Disclosure Statement***

2. The information disclosure statement filed 10/19/04 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has been partially considered, which has been initialed by the examiner and partially not considered, which has been cross out and not initialed by the examiner. Furthermore, the information disclosure statement filed 10/19/04 is missing page 14.

***Specification***

3. The abstract of the disclosure is objected to because it should avoid using phrases, which can be implied, such as, "comprising improvements to U.S. Pat. No. 6,395,167 and incorporating" in lines 2-3. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4, 6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 4 and 6, it is unclear as to what structure is being referred to by the "means" in line 2 of both claims.

With respect to claim 8, the limitation "whereby a tool is not required to remove it" in line 2 is considered as negative limitation, which applicant is claiming a tool structure that is not part of this invention. Therefore, it is unclear as to what tool is being referred to by the applicant.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 5, 7-9, 12-15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,395,167 (hereinafter Mattson).

In regard to claims 1 and 7, Mattson discloses in combination with a whirlpool bathtub (see Fig. 1), said whirlpool bathtub having a tub, the tub having an inside surface, a closed loop plumbing system, a housing assembly component (31), a water

pump (2) and an output jet (11), a suction and purification device (see Fig. 3) comprising a porous faceplate (20) having a chemical dispenser (44), and wherein said chemical dispenser is in axial alignment with said faceplate and located adjacent to a front surface of said faceplate.

In regard to claims 2 and 3, the chemical dispenser (44) is insertable into said housing assembly component (31) of said tub and is further located adjacent to an inlet orifice of said housing assembly component after insertion (see Fig. 5).

In regard to claim 5, the suction and purification device further comprising means (40) functioning to filter debris.

In regard to claim 8, the faceplate further comprises a pop off design, whereby a tool is not required to remove it.

In regard to claim 9, the faceplate has one or more rearwardly extending members for positioning the faceplate when initially inserted into the housing assembly component at members (25, 26 of Fig. 3).

In regard to claim 12, the chemical dispenser (44) further comprises one or more openings to release a metered dose of said chemical housed therein into said water.

In regard to claim 13, Mattson discloses in combination with a whirlpool bathtub, said whirlpool bathtub having a tub, the tub having an inside surface, a closed loop plumbing system, a housing assembly component (31), a water pump and an output jet, a suction and purification device comprising a faceplate means (20) functioning to filter substantially large debris from entering the closed loop plumbing system; said faceplate means having a dispensing means (44), said dispensing means functioning to

discharge antimicrobial chemicals (111) into said closed loop plumbing system; and wherein said dispensing means is in axial alignment with said faceplate means and located adjacent to a front surface of said faceplate means.

In regard to claim 14, the dispensing means (44) is insertable into said housing assembly component (31) of said tub (see Fig. 11).

In regard to claim 15 the dispensing means is further located adjacent to an inlet orifice of said housing assembly component after insertion (see Fig. 5).

In regard to claim 18, Mattson discloses in combination with a whirlpool bathtub, said whirlpool bathtub having a tub, the tub having an inside surface, a closed loop plumbing system, a housing assembly component, a water pump and output jets, a suction and purification device comprising a porous faceplate (20) having a chemical dispenser (44); wherein said chemical dispenser is in axial alignment with said faceplate and located adjacent to a front surface of said faceplate, said chemical dispenser housing a chemical (111); and wherein said chemical dispenser has one or more openings to release said chemical into a suction line of said closed loop plumbing system when contacted with water.

In regard to claim 19, the one or more openings may vary in size, configuration, and location (see Fig. 3).

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,395,167 (hereinafter Mattson).

Mattson discloses the claimed apparatus as discussed above except for the specific the length and diameter of the chemical dispenser. It would have been obvious to one having ordinary skill in the art at the time the invention was made to obtain a chemical dispenser having a length of less than about 8 inches and a diameter of less than about 2 inches as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Van Der Minden discloses a drain with a chemical dispenser therein.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
12/8/04

TN